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EXAMINER
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SADLON, JOSEPH

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3633

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,917	<b>Applicant(s)</b> TREVETHICK, SIMON	
	<b>Examiner</b> JOSEPH J. SADLON	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 41-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/25/08; 09/12/08; 09/28/07; 06/20/07</u> .                           | 6) <input type="checkbox"/> Other: _____                          |



### **DETAILED ACTION**

This communication is a First Office Action on the Merits. Claims 41-80, as originally filed, are pending and have been considered as follows:

#### ***Information Disclosure Statement***

The information disclosure statements (IDSs) submitted on 6/20/2007, 9/28/2007, 9/12/2008, and 11/25/2008 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements have been considered by the examiner.

However, the examiner has lined through Cite Nos. 2, 4, 5, 10, 12, 13, 19, 21, 23, and 38 in the Foreign Patent Documents section of the IDS filed 6/20/2007 for either failing to comply with 37 CFR 1.98(a)(2)(i) because a complete copy of the foreign language document was not provided (i.e., if Applicant only wanted the examiner to consider an Abstract, an Abstract should be listed in the Non-Patent Literature Documents section of the IDS) or for failing to comply with 37 CFR 1.98(a)(3)(i) because there was no statement of relevance of the foreign language document.

Also, the examiner has lined through 94 documents in the Foreign Patent Documents section of the IDS filed 9/12/2008 for either failing to comply with 37 CFR 1.98(a)(2)(i) because a complete copy of the foreign language document was not provided (i.e., if Applicant only wanted the examiner to consider an Abstract, an Abstract should be listed in the Non-Patent Literature Documents section of the IDS) or for failing to comply with 37 CFR 1.98(a)(3)(i) because there was no statement of relevance of the foreign language document.

Also, the examiner has lined through 47 documents in the NonPatent Literature Documents section of the IDS filed 9/12/2008 for either failing to comply with 37 CFR 1.98(b)(5) because no publication date was provided or for failing to list that the patent application was a foreign counterpart application (or how the patent application was related to the present application).

Also, the examiner has lined through the one patent in the U.S. Patent Document section of the IDS filed 11/25/2008 because the patent is a patent to Walper, not to Curry.

Also, the examiner has lined through 9 documents in the Foreign Patent Documents section of the IDS filed 11/25/2008 for either failing to comply with 37 CFR 1.98(a)(2)(i) because a complete copy of the foreign language document was not provided (i.e., if Applicant only wanted the examiner to consider an Abstract, an Abstract should be listed in the Non-Patent Literature Documents section of the IDS) or for failing to comply with 37 CFR 1.98(a)(3)(i) because there was no statement of relevance of the foreign language document.

Finally, the examiner has lined through all 4 documents in the NonPatent Literature Documents section of the IDS filed 11/25/2008 for either failing to comply with 37 CFR 1.98(b)(5) because no publication date was provided (i.e., the examiner notes that a date something is printed from the internet is NOT a publication date) or for failing to list that the patent application was a foreign counterpart application (or how the patent application was related to the present application).

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following claimed features must be shown or the feature(s) canceled from the claim(s); no new matter should be entered:

- “transverse channel...outer surface of the batten” (claim 49; a transverse channel on the outer surface of the batten for face to face engagement with the overlying cladding sheet has not been shown)
- “preformed lines of weakness...predetermined intervals” (claim 59; lines of weakness or predetermined intervals have not been shown)
- “batten and cladding subassembly” (claim 78; a subassembly of battens and cladding has not been shown)

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 41-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Zambelli et al. (U.S. 6,729,093).**

**As per claim 41**, Zambelli et al. teaches an elongate batten (via sheet 2, FIG. 2) adapted for positioning intermediate an inner wall framing member (via sheet 3, FIG. 2) and an outer wall cladding sheet (via body 13, FIG. 2) to facilitate dispersion and evaporation of moisture from a wall cavity, said batten including at least one longitudinally extending channel (via chamber 4, FIG. 2) to facilitate migration and drainage of moisture between the batten and the framing member along the length of the batten.

**As per claim 42**, Zambelli et al. teaches the at least one longitudinal channel (via recess 5, FIG. 1) is formed in an inner surface of the batten adapted for face-to-face engagement with an adjacent outer surface of the underlying framing member (see “toward” col. 2, ln. 65-68).

**As per claim 43**, Zambelli et al. teaches the at least one longitudinal channel is formed in an outer surface of the batten (see FIG. 2; note grooves 9 are recognized as being on an outer surface) adapted for face-to-face engagement with an adjacent inner surface of the overlying cladding sheet.

**As per claim 44**, Zambelli et al. teaches the at least one longitudinal channel extends through the batten (see FIG. 2; note chamber 4 is recognized as extending “through” panel 1 i.e. between sidewalls, cups, and second sheet).

**As per claim 45**, Zambelli et al. teaches a plurality of said longitudinal channels disposed in generally parallel side-by-side relationship (see FIG. 2; note grooves 9 are recognized as having parallel, side by side relationship) and extending along substantially the entire length of the batten.

**As per claim 46**, Zambelli et al. teaches the longitudinal channels are respectively formed between adjacent pairs of a corresponding plurality of longitudinal



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ridges (via cups 2a), said ridges collectively defining the inner surface of the batten (see FIG. 2; see also “delimit, between them” col. 2, ln. 59).

**As per claim 47**, Zambelli et al. teaches the batten includes a generally transverse channel (via passage 6, FIG. 5) to facilitate migration and drainage of moisture across the batten.

**As per claim 48**, Zambelli et al. teaches said transverse channel is formed in the inner surface (via passage 6, FIG. 5) of the batten adapted for face-to-face engagement with the adjacent outer surface of the framing member (via face of sheet 3, FIG. 2).

**As per claim 49**, Zambelli et al. teaches the transverse channel is formed in an outer surface of the batten (via groove 9, FIG. 3; note grooves 9 are recognized as extending longitudinally and transversely) adapted for face-to-face engagement with an adjacent inner surface of the overlying cladding sheet (via concrete body 13, FIG. 2).

**As per claim 50**, Zambelli et al. teaches the transverse channel extends through the batten (see FIG4; note groove 9 and passage 4 extend transversely through first sheet 2).

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**As per claim 51**, Zambelli et al. teaches a plurality of said longitudinal channels (via recesses 5, FIG. 1) disposed in generally parallel side-by-side relationship and extending along substantially the entire length of the batten,

the longitudinal channels being respectively formed between adjacent pairs of a corresponding plurality of longitudinal ridges (via cups 2a, FIG. 1), said ridges collectively defining the inner surface of the batten (see FIG. 1; note recesses along inner surface are defined by cups 2a), and

a plurality of said transverse channels (via passages 6 and grooves 9, FIG. 4) to facilitate migration and drainage of moisture across the batten, said transverse channels being disposed in generally parallel side-by-side relationship (see FIG. 4; note passages 6 and grooves 9 are recognized as being disposed in generally parallel side-by-side relationship).

**As per claim 52**, Zambelli et al. teaches the transverse channels are defined by a corresponding series of openings (via passages 6, Fig. 6) formed in the respective longitudinal ridges.

**As per claim 53**, Zambelli et al. teaches the openings defining the respective transverse channels are transversely aligned (via passages 6, FIG. 4).

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**As per claim 54**, Zambelli et al. teaches the openings defining the respective transverse channels are transversely staggered (via passages FIG. 4; note passages 6 are considered staggered across width of recess 5).

**As per claim 55**, Zambelli et al. teaches the transverse and longitudinal channels form a ventilation and drainage matrix (via “mutually connected recesses 5” col. 4, ln. 40-44) adapted to permit migration of moisture in liquid or vapour form across, along and through the batten.

**As per claim 56**, Zambelli et al. teaches the longitudinal and transverse channels are disposed in generally orthogonal relationship (see FIG. 3; note grooves 9 are recognized as intersecting in a generally orthogonal relationship).

**As per claim 57**, Zambelli et al. teaches at least some of the transverse and longitudinal channels respectively intersect (see FIG. 3; note grooves 9 are recognized as intersecting in a generally orthogonal relationship).

**As per claim 58**, Zambelli et al. teaches being formed from a plastics material adapted to resist moisture permeation (see “solved the problem” col. 1, ln. 65-67), and adapted to be readily cut to desired lengths using conventional sawing tools (via “molded polystyrene” claim 14; note molded polystyrene is recognized as a material that is readily cut by hand using conventional tools).

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**Claims 71, 72, 74, 75, 76, and 79 and 80 are rejected under 35 U.S.C. 102(b) as being anticipated by Clayton (U.S. 2002/0108333).**

**As per claim 71**, Clayton teaches a method of building construction (via “inexpensive system and method”, [0002] lines 1-4), said method comprising the steps of (via “construction”, claim 7):

forming a structural frame from framing members (via “wooden structural members”, cl. 7, ln. 4; see also stud 1, FIG. 6),

such that the framing members define cavities therebetween (see wooden stud 1, Fig. 6; note that although only a single stud is shown, it is construed that a plurality of studs would be arranged to comprise an exterior surface of cl. 6);

securing a plurality of battens (via hydrophobic layer 20, FIG. 6) to outer surfaces (via outer face 3, FIG. 6) of at least some of the framing members (via at least one shown, FIG. 6),

wherein each of said plurality of battens include at least one longitudinally extending channel (via notches 62, FIG. 7; note also notches shown on hydrophobic layer 20, facing wooden stud 1, FIG. 6) to facilitate migration and drainage of moisture (via “water” and “downward” [0014] ln. 10-13) between the batten and the framing member along the length of the batten,

applying an outer cladding material (via stucco layer 10, FIG. 6) to substantially cover the framing members and the battens (see “overlain” [0012] ln. 5-7);

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such that the battens collectively form a clearance space (see FIG. 6; note clearance formed between stud 1 and stucco layer 10) between the framing members and the cladding material;

the battens thereby facilitating drainage (via “flow downward” [0014] ln. 10-13) and ventilation (see “communicating between” [0014] ln. 7-8) of the cavities.

**As per claim 72**, Clayton teaches the structural frame is formed substantially from a material selected from the group comprising timber (via wooden stud 1, FIG. 6), metal, FRC and plastics, and wherein the method is employed to construct a wall section (via “wall construction” [0002] ln. 1-3) of a building.

**As per claim 74**, Clayton teaches the battens are secured so as collectively to cover more than approximately 50% (see FIG. 6; note it is recognized that hydrophobic layer 20 is shown covering “more than approximately 50%” of outer surface 3 of wooden stud 1) of the combined outer surface area of the framing members to which the method is applied.

**As per claim 75**, Clayton teaches the battens are secured to the framing members by a fastening technique selected from the group comprising nailing (via fastening means 7, FIG. 6; see also “nails” claim 8, ln. 3), screwing, tacking, stapling, gluing, welding, chemical bonding, frictional engagement, and mechanical engagement.

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**As per claim 76**, Clayton teaches the further step of applying an internal lining material (via gypsum wallboard 4, FIG. 6) such that the framing members are effectively sandwiched, directly or indirectly, between the external cladding material and the internal lining material (see FIG. 6; note it is recognized that wooden stud 1 is considered “effectively sandwiched” as claimed).

**As per claim 79**, Clayton teaches including the step of forming the at least one longitudinal channel or a generally transverse channel in the batten by a process selected from the group comprising: extruding; machining; milling; routing; casting; moulding; and fabricating (via “formed” [0018] In. 8); or a combination of those.

**As per claim 80**, Clayton teaches a building or building section constructed by the method comprising:

forming a structural frame (via “load bearing members” [0013] In. 3-6; see also stud 1, FIG. 6) from framing members, such that the framing members define cavities therebetween (see wooden stud 1, Fig. 6; note that although only a single stud is shown, it is construed that a plurality of studs would be arranged to comprise an exterior surface of cl. 6);

securing a plurality of battens (via hydrophobic layer 20, FIG. 6) to outer surfaces of at least some of the framing members (via outer surface 3, FIG. 6),

wherein each of said plurality of battens include at least one longitudinally extending channel (via notch 62, FIG. 7; see also FIG. 6) to facilitate migration and

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drainage of moisture (via “flow downward” [0014] In. 10-13) between the batten and the framing member along the length of the batten,

applying an outer cladding material (via stucco 10, FIG. 6) to substantially cover the framing members and the battens (see FIG. 6; note it is recognized that stucco layer 10 is shown to “substantially cover” wooden stud 1 and hydrophobic layer 20);

such that the battens collectively form a clearance space between the framing members and the cladding material (see FIG. 6; note it is recognized that a clearance space is formed between stud 1 and stucco layer 10).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Shaw (U.S. 4,837,991).**

**As per claim 59**, Zambelli et al. teaches the limitations of claim 41, but fails to explicitly disclose incorporating pre-formed lines of weakness disposed at predetermined intervals, to permit the batten to be manually divided into small sections of desired length, without the need for cutting or sawing.

Shaw '991 teaches a channel means (title) wherein a polymer extrusion is used in construction to provide a means for absorption and the drain away of moisture (col. 2, ln. 46) in which, during extrusion, preformed lines of weakness can be included to allow a portion of the channel to later be manually divided into small sections of desired length, without the need for cutting or sawing.

From this teaching of Shaw '991, it would have been obvious to one of ordinary skill in the art of water mitigation to include the longitudinally or horizontally disposed weakened lines for the purpose of allowing the sheet to be manually divided into small sections of desired length, without the need for cutting or sawing.

**Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Shaw (U.S. 6,108,992).**

**As per claim 60**, Zambelli et al. teaches the limitations of claim 41 but fails to explicitly disclose a batten being formed substantially from PVC.

Shaw '992 teaches a rot protector (title) designed to prevent moisture accumulation (via "prevents" col. 5, ln. 48) and promote runoff (via "drip off" col. 6, ln. 24) constructed of resilient thermoplastic material (via "resilient" col. 8, ln. 11).



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Since PVC is a widely used thermoplastic material, from this teaching of Shaw '992, it would have been an obvious choice to one of ordinary skill in the art to construct the sheet of Zambelli et al. using PVC for the purpose of providing a surface that will prevent water accumulation and promote runoff.

**Claim 61 rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Black et al. (U.S. 2003/005412).**

**As per claim 61**, Zambelli et al. teaches the limitations of claim 41, but fails to explicitly disclose being formed substantially from FRC.

Black et al. teaches a reinforced fiber cement article (title), wherein it is disclosed that fiber cement ("FC") materials have preferred qualities of non-combustibility, strength, and durability (see [0111], ln. 1-4).

From this teaching of Black, et al. it would have been obvious to one of ordinary skill in the art at the time the invention of Zambelli et al. was made to use fiber cement in constructing the panel for the purpose of providing a non-combustible, strong, and durable article.

**Claims 62-69 rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. alone.**

**As per claims 62-65**, Zambelli et al. teaches the limitations of claim 41, but fails to explicitly disclose:

- the batten being between 30 and around 60 mm in width

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- being approximately 45 mm in width
- between 10 mm and around 30 mm in thickness
- being approximately 19 mm in thickness

It is well settled that changes in size/proportion do not constitute a patentable difference. See *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), wherein the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. See also, *Hobbs v. Wisconsin Power and Light Company et al.*, 115 USPQ 371 (CA 1957), in which the court stated that “[g]enerally, it is not invention to change size or degree of thing or of any feature or function of machine or manufacture; there is no invention where change does not involve different concept, purposes, or objects, but amounts to doing same thing substantially the same way with better results.” See also, *The Ward Machinery Company v. Wm. C. Staley Machinery Corporation*, in which the court stated that “[i]mprovement resulting from change in size, proportion, or degree of element contained in prior art, no matter how desirable or useful, does not constitute patentable invention.”

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Zambelli et al. by making the panel of

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appropriate dimensions in order to produce an optimal structure and because changes in size/proportion do not constitute a patentable difference.

**As per claim 66**, Zambelli et al. teaches three longitudinal channels (see FIG. 2), but fails to explicitly disclose:

- each being approximately 9.5 mm in width and approximately 17 mm in height
- defined by respective intermediate ridges being approximately 2.5 mm in thickness.

(See rejections of claim 62-65 above)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Zambelli et al. by making the panel to appropriate dimensions for the structure to be protected and because changes in size/proportion do not constitute a patentable difference.

**As per claim 67**, Zambelli et al. teaches the limitations of claim 66, and further discloses the transverse channels are defined by a series of cutouts in the ridges (via passage 6, FIG. 6), each cutout being generally U-shaped (see FIG. 6; note channels 6 are recognized as having a generally U-shaped profile) but fails to explicitly disclose:

- the cutouts having a length of around 20 mm and a height of around 8 mm,

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- the cutouts being spaced apart along the respective ridges with approximately 50 mm between centers.

(See rejections of claims 62-65 above)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Zambelli et al. by making the panel to appropriate dimensions for the structure to be protected and because changes in size/proportion do not constitute a patentable difference.

**As per claim 68**, Zambelli et al. teaches corresponding cutouts on adjacent ridges are staggered (via passages 6, FIG. 4; note passages 6 are considered staggered, as broadly claimed, occurring at intervals across width of recess 5).

**As per claim 69**, Zambelli et al. teaches the limitations of claim 41, and further discloses the batten being adapted for division into smaller predetermined lengths on-site (via foamed polystyrene, which is known to manipulated by conventional tools) but fails to explicitly disclose:

- the batten having any preformed length of around 2400mm.

(See rejections of claims 62-65 above)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Zambelli et al. by making the panel to appropriate dimensions for the structure to be protected and because changes in size/proportion do not constitute a patentable difference.

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**Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Biro (U.S. 6,018,925).**

**As per claim 70**, Zambelli et al. teaches the limitations of claim 41, but fails to disclose the outer surface is grooved, to facilitate the downward passage past the batten of water passing along the inner surface of the outer cladding material.

Biro teaches an elongated flooring structure (title) designed to protect underlying surfaces (via “protecting” col. 2, ln. 61-62), wherein channels are integrally provided (col. 4, ln. 59-63) to carry water away from the surface.

From this teaching of Biro, it would have been obvious to one of ordinary skill in the art of water mitigation at the time the invention of Zambelli et al. was made to include the flutes and channels of Biro in the cups of Zambelli et al. for the purpose of carrying water away from the surface of the sheet.

**Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Clear et al. (U.S. 6,119,422).**

**As per claim 73**, Clayton teaches the method according to claim 71, but fails to explicitly disclose the cladding material is FRC sheet.

Clear et al. teaches a composite building panel (via Abstract, ln. 1-2), wherein the panel includes a reinforced cementitious panel to provide an improved insulated panel with more resistance to damage.

From this teaching of Clear et al., it would have been obvious to one of ordinary skill in the art at the time the invention of was made to modify the invention of Clayton

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by substituting the stucco layer with the reinforced cementitious panel of Clear et al. for the purpose of providing an improved insulated panel with more resistance to damage.

**Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Flotow et al. (U.S. 3,859,766).**

**As per claim 77**, Clayton teaches the method according to claim 76, but fails to explicitly disclose the internal lining material is plasterboard.

Flotow et al. teaches a wall structure for mobile homes (title), wherein a wall structure comprises an internal lining material of plasterboard (via plasterboard sheets 14, FIG. 1).

From this teaching of Flotow et al., it is apparent that it would have been an obvious engineering choice to one of ordinary skill in the art to modify the invention of Clayton by constructing the drainage apparatus using the plasterboard sheets of Flotow et al. attached to the inner face of the wooden stud.

**Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zambelli et al. in view of Cox (U.S. 7,096,629).**

**As per claim 78**, Clayton teaches the method according to claim 71, but fails to explicitly disclose the step of pre-attaching the battens to the cladding sheets to form a batten and cladding sub-assembly, and subsequently securing the sub-assembly to the frame.

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Cox teaches an exterior wall cladding system (title) specifically designed for thin reinforced panels (via Abstract, ln. 1-2), which are structurally supported in such a manner to sufficiently resist various bending forces (col. 6, ln. 35-48), wherein:

cladding (exterior wall cladding, title) is provided by pre-attaching the battens (via frame 100, FIG. 38) to the cladding sheets (via thin stone panel 101, FIG. 38) to form a batten and cladding sub-assembly, and subsequently securing (via “attached” col.8 ln. 30-33; note interlocking connection taught by Cox is considered analogous to nailing as means for securing) the sub-assembly to the frame (via substrate 138b, FIG. 38; see also “steel stud framing” col. 6, ln. 60).

From this teaching of Cox, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method taught by Clayton by pre-attaching the battens to the cladding sheets using the method of Cox to form a batten and cladding sub-assembly, and subsequently securing the sub-assembly to the frame, for the purpose of providing strength and stiffness, as well as allowing pre-assembly in a shop thereby lowering the cost of production.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- i. U.S. 7,367,165 to Matzinokas teaches a a moisture control strip with contacting faces which permit drainage of liquids with a layered wall.

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- ii. U.S. 6,760,978 to Gleeson teaches a system of grooves indented into a surface of a building sheet to provide a guide for scoring and subsequently breaking the sheet.
- iii. U.S. 7,493,738 to Bui teaches a lightweight modular reinforced cementitious panel for construction with a waterproof coating.
- iv. U.S. 6,449,915 to Park teaches an inner wall humidity control panel for protecting cultural property which incorporates transverse gooves.
- v. U.S. 6,584,735 to Burton teaches another wall drainage system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH J. SADLON whose telephone number is (571)270-5730. The examiner can normally be reached on M-F 7:30A-5:00P/Alt. Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gay Ann Spahn can be reached on (571)272-7731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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/Gay Ann Spahn/  
Gay Ann Spahn, Primary Examiner  
July 19, 2009  
/JS/

JOSEPH J SADLON  
Examiner  
Art Unit 3633